

IV. REMARKS

Claims 1 – 20 are cancelled. Claims 21 – 75 are added. The cancellation of claims 1 – 20 is not in response to any rejection in the present Office Action, but rather claims 1 – 20 were cancelled in favor of new claims 21 – 75, which enhance the Applicant's patent portfolio with claims of varying scope.

No new matter is added by the amendments presented herein. Consideration of claims 21 – 75 in light of the following remarks is respectfully requested.

A. Information

As a courtesy to the Examiner, Applicant wishes to make the Examiner aware of a Petition to Accept an Unintentionally Delayed Priority Claim filed in the subject application on September 13, 2004. The unintentionally delayed priority claim is a claim under 35 U.S.C. § 119(e) for the benefit of U.S. Provisional Patent Application No. 60/403,997, filed August 17, 2002. Applicant is currently awaiting the decision of the Petitions Office with respect to said Petition.

B. Restriction

Claims 1 – 20 were subject to a restriction requirement. Claims 1 – 14 were provisionally elected, and were examined as reported in the current Office Action.

Applicant has cancelled claims 1 – 20, and presented new claims 21 – 75 herein. Applicant respectfully submits that the cancellation of claims 1 – 20 and presentation of new claims 21 – 43 is responsive because claims 21 – 43 are consistent with the claims elected and examined in the current Office Action.

C. Objection to the Abstract

The abstract has been amended herein to remove recitation of the term "means". Therefore, it is requested that the rejection be withdrawn.

D. Objections and Rejections to the Claims

In the present Office Action, various objections were made to the claims, and various rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) were made to claims 1 – 6, 8 and

10 – 14. Applicant submits that the objections and rejections in the present Office Action have been rendered moot by the cancellation of claims 1 – 20.

E. Consideration of New Claims 21 – 75

New claims 21 – 75 include two independent claims, namely, claims 21 and 44. Claims 22 – 43 each depend directly or indirectly from claim 21. Claims 45 – 75 each depend directly or indirectly from claim 44.

Claim 21 is drawn to an apparatus comprising a housing, a bollard reciprocatingly received within the housing, a plate disposed within the bollard, a spring reciprocatingly received within the bollard and secured at a proximal end to the plate, and a lift mechanism received at least in part within the spring. The lift mechanism provides for reciprocating the spring between compressed and extended positions, and the compression and extension of the spring causes reciprocation of the bollard between retracted and extended positions.

Claim 44 is drawn to a method comprising providing a housing, reciprocatingly placing a bollard having a plate disposed therein within the housing, reciprocatingly placing a spring within the bollard, securing a proximal end of the spring to the plate, placing a lift mechanism at least in part within the spring; and using the lift mechanism to reciprocate the spring between compressed and extended positions. The compression and extension of the spring causes reciprocation of the bollard between retracted and extended positions.

Applicant notes that claims 1, 2 and 4 (which have been cancelled herein) were rejected under 35 U.S.C. § 102 (b) over U.S. Patent No. 4,576,508 to Dickinson (hereafter “Dickinson”). Applicant further notes that claims 3, 5, 6 and 8 (which have been cancelled herein) were rejected under 35 U.S.C. § 103 (a) over Dickinson, either alone, or in combination with U.S. Patent No. 5,509,753 to Thompson (hereafter “Thompson”) or U.S. Patent No. 4,666,331 to Riley (hereafter “Riley”). Applicant respectfully submits that a rejection under 35 U.S.C. § 102 over Dickinson, or under 35 U.S.C. § 103 over Dickinson, Thompson and Riley, would be improper if applied against claims 21 – 75.

As to a rejection under 35 U.S.C. § 102 over Dickinson, Applicant notes that MPEP § 2131 provides that “[t]o anticipate a claim, the reference must teach every element of the claim....” Dickinson fails to meet the standard required by MPEP § 2131 because Dickinson

does not disclose or suggest each and every element of independent claims 21 and 44, or the claims dependent thereon.

Dickinson describes a barrier comprising a tubular foundation (F) having a first guide means (G1) extending vertically therethrough to guide and rotatably orient a mounting frame (M), and a second guide means (G2) extending vertically therethrough to guide and rotatably orient the bollard (B). (Col. 3, lines 30 – 42). The guide means are positioned in the foundation such that they are in alignment with vehicular movement and coincidental with the expectant direction of traffic flow and impact. (Col. 3, lines 46 – 49). The mounting frame (M) is a hanger structure that depends into the foundation, and is rotationally oriented by the first guide means (G1) to be aligned with the traffic and impact forces expected. (Col. 3, lines 55 – 64). A power cylinder (A) is positioned to stand within the foundation on a central axis. (Col. 3, lines 67 – 68). A bollard (B) is dropped into the foundation and over the power cylinder and secured in place. (Col. 4, lines 62 – 67). The bollard is maintained in a vertical position and oriented to the direction of vehicular movement by the second guide means (G2). (Col. 4, lines 34 – 41). The power cylinder (A) is connected to a pressure-volume accumulator (C), which operates in conjunction with a motor (M) and a positive displacement pump (P) to extend and retract the bollard. (Col. 5, lines 10 – 35).

In contrast to claim 21, Dickinson does not disclose, suggest or motivate an apparatus comprising a housing, a bollard reciprocatingly received within the housing, a spring reciprocatingly received within the bollard, and a lift mechanism received at least in part within the spring, which lift mechanism provides for reciprocating the spring between compressed and extended positions, and causing reciprocation of the bollard between retracted and extended positions. Accordingly, as applied to claim 21, Dickinson fails to meet the standard required by MPEP § 2131 because Dickinson does not disclose or suggest each and every element of independent claim 21. Moreover, a case of anticipation over Dickinson fails as applied to claims 22 – 43, as each of these claims includes at least the same elements as claim 21.

In contrast to claim 44, Dickinson does not disclose, suggest or motivate a method comprising providing a housing, reciprocatingly placing a bollard within the housing, reciprocatingly placing and securing a spring within the bollard, placing a lift mechanism at least in part within the spring, and using the lift mechanism to reciprocate the spring between

compressed and extended positions, and the bollard between retracted and extended positions. Accordingly, as applied to claim 44, Dickinson fails to meet the standard required by MPEP § 2131 because Dickinson does not disclose, suggest or motivate each and every element of independent claim 44. Moreover, a case of anticipation over Dickinson fails as applied to claims 45 – 75, as each of these claims includes at least the same elements as claim 44.

Accordingly, Applicant respectfully submits that a rejection of claims 21 – 75 under 35 U.S.C. § 102 over Dickinson would be improper, and requests favorable consideration of claims 21 – 75.

As to a rejection under 35 U.S.C. § 103 over Dickinson, Thompson and Riley, Applicant notes that MPEP § 2142 provides that a prima facie case of obviousness requires three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. In the present case, none of the criteria set forth in MPEP § 2142 have been satisfied with respect to independent claims 21 and 44, or the claims dependent thereon.

As discussed above, Dickinson does not disclose, suggest or motivate all of the limitations of claims 21 or 44. Thus, at least one of the criteria of a prima facie case of obviousness has not been met, and therefore a prima facie case of obviousness cannot be made. Moreover, Applicant notes that neither Thompson nor Riley provides disclosure, suggestion or motivation, or as to the subject matter missing in Dickinson.

Riley describes a post anchored in the earth that is deployed by an explosive charge (see, e.g., Figs. 2A, 2B, 5 and 6) or a compression spring with a trigger latch assembly (see, e.g., Figs. 7A and 7B). Once the post has been deployed, Riley describes lowering the post by either (1) rotating the post about its longitudinal axis until notches therein align with latch members to permit a foot portion of the post to pass downwardly through the latch assembly region (Col. 6, lines 15 – 20); or (2) using a hand winch (Col. 7, lines 10 – 20). Thus, the post of Riley is not retracted by a lift mechanism, nor is the post reciprocated between extended and retracted positions with a lift mechanism. Accordingly, Riley does not disclose, suggest or motivate at

least one of the elements of claims 21 and 44, nor the claims dependent thereon. Thus, Riley also fails to support a prima facie case of obviousness.

Thompson describes a speed bump that is a bi-folding structure comprised of interlocking bump plates and roll hinges. (Col. 3, lines 41 – 43). Thompson clearly does not disclose, suggest or motivate an apparatus comprising a housing, a bollard reciprocatingly received within the housing, a spring reciprocatingly received within the bollard, and a lift mechanism received at least in part within the spring, which lift mechanism provides for reciprocating the spring between compressed and extended positions, and causing reciprocation of the bollard between retracted and extended positions. Further, Thompson does not disclose, suggest or motivate a method comprising providing a housing, reciprocatingly placing a bollard within the housing, reciprocatingly placing and securing a spring within the bollard, placing a lift mechanism at least in part within the spring; and using the lift mechanism to reciprocate the spring between compressed and extended positions, and the bollard between retracted and extended positions. Accordingly, Thompson does not disclose, suggest or motivate at least one of the elements of claims 21 and 44, nor the claims dependent thereon, and therefore cannot support a prima facie case of obviousness.


In view of the foregoing, Applicant respectfully submits that a rejection of claims 21 – 75 under 35 U.S.C. § 103 over Dickinson, Thompson and Riley would be improper, and requests favorable consideration of claims 21 – 75.

CONCLUSION

Claims 21 – 75 are now pending in the present application. In view of the foregoing, allowance of all pending claims is respectfully requested. The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Dated: Nov. 12, 2004

File: 35706.3
1284287_1.DOC